

# REPORT

OF THE

MAJORITY OF THE SELECT COMMITTEE,

APPOINTED TO

EXAMINE INTO THE TRANSACTIONS

CONNECTED WITH THE

ELECTION OF STATE PRINTER.

MR. CHAMPNEYS, CHAIRMAN.

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Printed by order of the Senate of Pennsylvania, February 15, 1844.

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HARRISBURG:

ISAAC G. M'KINLEY, STATE PRINTER.

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1844.

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REPORT

MAJORITY OF THE SELECT COMMITTEE

EXAMINE INTO THE TRANSACTION

RELATION OF STATE PRINTER

WILLIAM L. GARDNER

Printed by order of the House of Representatives, January 1844

WASHINGTON

AND B. M. MANNING, STATE PRINTER

1844



## MAJORITY REPORT.

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The select committee on printing, to whom was referred the report made by the joint committee of investigation, appointed by the Senate and House of Representatives, with instructions to make an additional report, touching the law and the facts involved in the election of State Printers, made a report, which was read as follows, viz :

That, from the time the committee was appointed to act in conjunction with the committee of the House of Representatives, to investigate the charges made in the message of the Governor, they felt deeply impressed with the responsibility of the duties which thus devolved upon them, and proceeded to the investigation with an earnest desire to elicit all the facts necessary to form a correct judgment. As the security and permanence of our free institutions depend upon the purity of the elective franchise, when exercised by the body of the voters, so it is equally important to protect the legislative department of the government from any improper influences in the performance of their duties, which might prove adverse to the public interests. The great protection to private rights, and the sure guarantee for the faithful discharge of public duty is to be found in the exercise of strict integrity.

Candidates for official station and public officers should learn that in the applications for appointment, and in the discharge of responsible trusts, a determination to act with uprightness, and a sincere desire to accomplish the purposes of the station, should be the chief motives and the true security for public approbation. The ultimate preservation of our liberties mainly depends upon maintaining the distinct boundaries and powers of the legislative, judicial and executive branches of the government ; so that each may perform its appropriate duties with integrity, without either attempting any encroachment upon the rightful prerogatives of the other. And above all other considerations, and as essential to the just exercise and proper restriction of these powers within their appropriate limits, unbending virtue, a deep sense of responsibility to the public interests in the performance of public duty, should be the actuating and controlling impulses of public agents.

The great interests of freedom, human happiness and social security, will be promoted and cherished alone by a resolute determination to resist every influence which may poison the true sources of power. A strict adherence to these principles in the performance of public duty will tend to inculcate a higher appreciation of the value of our free institutions, and insure a more devoted attachment to the principles which give them their strength and security.

The committee, feeling conscious of the truth of these general sentiments, and being determined to be guided by them, in the prosecution of their inquiries, proceeded in the performance of their duties, to ascertain all the facts which they thought to be essential ; and endeavored, in effecting that object, to incur as little expense as was deemed to be consistent with a proper discharge of their obligations to the public.

To understand distinctly the nature of the charges preferred against the persons claiming to be the State Printers elect, which were referred to the committee, and to make a proper application of the testimony adduced, it will be necessary to refer to that part of the Governor's message which contains these charges : It is as follows,

“Under the act of the 24th March last, entitled ‘An Act to create permanently the office of State Printer,’ Isaac G. M’Kinley, and Hutter and Bigler have claimed to be State Printers ; the former to do the English, and the latter to do the German printing



of the Commonwealth. The language of the act of Assembly, seemed to me to render the validity of this election doubtful, and I caused the question to be submitted to the Attorney General, whose opinion on the subject is herewith transmitted to the Legislature. I concurred with him, and accordingly declined to approve the bonds tendered, informing the parties that the whole matter would be submitted to the early attention of the Legislature. Had the parties interested reason to complain of the course pursued by the Executive, they might have applied to the Supreme Court, during its session in Harrisburg, for a writ of mandamus, directing the Governor to approve their bonds, which was a mere ministerial duty, unless he could show some legal reason for his refusal. I was at all times ready to have met this issue before that tribunal, and have at no time entertained a doubt of the result, or propriety of my course.

“In addition to the legal argument presented by the Attorney General, which I regard as unanswerable, there are some other circumstances connected with that election, which make it peculiarly necessary that they should be brought to your most serious consideration. The election was postponed from time to time, from the 27th day of March, the third day after the passage of the law, and on which, according to its provisions, it should have taken place, to the 15th day of April, on which, according to the certificate presented to me, it was made. During this interval of time, and before the day on which the election was consummated, I have been informed, and have good reason to believe, that negotiations were entered into and completed between the said Isaac G. M’Kinley, Hutter and Bigler, and other persons, supposed to have influence with members of the Legislature, by which large sums of money were paid or contracted to be paid, by the individuals elected, to these third persons, for their aid and influence in procuring their election. In some instances, as I have been assured, the sum paid, or contracted to be paid, depended upon the number of votes procured by the contracting parties for the successful candidates ; and thus was exhibited a scene of scandalous bargaining and selling, alike disgraceful to the parties concerned, and dangerous to the purity of elections. It is not to be presumed that this scheme of office purchasing was known to any member of the Legislature ; for, if it had been, the parties concerned would, I have no doubt, been exposed, and consequently defeated. As this transaction more immediately concerns the purity and honor of the Legislature itself, I need only call your attention to these circumstances, and have no doubt you will feel it to be your duty to institute a thorough investigation into the frauds thus practised upon the Legislature, to procure an election. Should the facts, upon examination, be found to be, as I have the strongest reason to think they are, can it be, that a single member of the Legislature will recognize the validity of an election thus procured ? Let it be known that candidates can resort to such means to accomplish their purposes, and there is an end to all confidence and respect for our Legislatures. It is one of the elementary principles of every enlightened system of jurisprudence, that fraud vitiates every contract into which it enters ; and, in every stage of completion, these contracts are arrested as soon as the fraud is discovered. There can be no fraudulent practice more odious than one like this, striking at the purity of legislation, and I am confident the representatives of the people will apply a thorough corrective, the instant they are made acquainted with the facts.”

It will be observed, that in the charges made by the Governor against the State Printers, for their negotiations and arrangements with third persons, in order to secure their election, he stated distinctly, that “it is not to be presumed that this scheme of office purchasing was known to any member of the Legislature ; for, if it had been, the parties concerned would, I have no doubt, been exposed, and consequently defeated.”

There is no charge in the message, therefore, which affects either the purity or the integrity of the legislative branch of the government ; and the committee is gratified in declaring, that from the evidence adduced, no inference can fairly be drawn that improper or corrupt influences were either attempted or exerted to sway the vote of any member of the convention which made the election.

At a very early stage of the proceedings of the committee, the counsel for those claiming to be elected State Printers, suggested the propriety of some definite specifi-



cation of the facts and charges to which they might answer, and which would also enable them to direct their attention to the production of such testimony as was necessary for their defence. The committee, after some modification of the written proposition presented by the counsel, adopted the following series of inquiries as the basis of their investigation; and the several interrogatories, as to the matters of fact, were propounded to each witness. These inquiries were as follow:

Was the election of Isaac G. M'Kinley, and Hutter and Bigler, as State Printers, valid in law?

Had the Governor a right, under the circumstances, to decline to approve the bonds tendered by the persons elected State Printers?

Was any sum of money or other property paid, or promised, or offered to be paid by Isaac G. M'Kinley, and Hutter and Bigler, or any or either of them, to any member or members of the Legislature of 1843, *or to any other person or persons, and if so, to whom?* in order to induce such member or members to vote for them, the said M'Kinley, Hutter and Bigler, or either of them, as State Printers or State Printer; and if so, what were such sums of money or other property, and who was the member, or who were the members?

Was any sum of money or other property paid or promised, or offered to be paid, or any office or offices promised, or the hope of obtaining any office or offices, held out to any member or members of the Legislature of 1843, *or to any other person or persons, and if so, to whom?* by David R. Porter, Governor of the State of Pennsylvania, or by any person or persons authorized by him, in order to procure the vote or votes, of such member or members, for John H. Dimock, or any other person or persons as State Printer or State Printers; and if so, what were such sums of money or other property, or such office or offices, and who was the member, or who were the members?

The committee will, therefore, direct their attention to three propositions as embracing all the objects of inquiry which were referred for their consideration:

1st. Was the election of State Printer valid and legal, and binding upon both the Legislature and Executive?

2d. Was the Governor justified in refusing to approve the bonds tendered by the State Printers elect, for the reasons which he gave?

3d. Are the pecuniary arrangements proved, as made by Mr. M'Kinley with third persons, sufficient to invalidate the election and annul the alleged contract; and if not, ought the Legislature to exercise that equitable authority over the contract, in controlling and regulating its duration, as will secure the public interests from present and future abuses?

These several propositions necessarily present questions of great magnitude, involving considerations intimately associated with the fundamental principles of our free institutions, and tending in their examination towards the important inquiry, as to the power of the Legislature in controlling the effect of its acts, and limiting their operation when the consequence of carrying such acts into full effect might tend to defeat the great moral purposes and salutary influence of government.

The committee do not intend to present an extended discussion of these questions; but will merely advert to such prominent facts and principles as will tend to their proper illustration.

For the purpose of carefully examining the first question thus presented, it will be necessary to consider the nature of the authority exercised by the Senate and House of Representatives, in convention, in the election of State Printer; the provisions regulating the exercise of this power; the manner in which the same was exercised; and the powers inherent in the convention.

The Governor, in his annual message of January 4th, 1843, in directing the attention of the Legislature to the necessity of reducing their legislative expenses, remarks: "The public printing is one of the largest items in this expenditure, and has increased in a ratio that defies reasonable explanation. It demands a remedy. I can see none better than to provide for appointing a public printer, to execute all the public printing at fixed and reasonable prices. The work can then be done with greater facility and



economy. Sound policy strongly recommends this measure, and the example of other States fully sanctions it. I respectfully commend it to your attention."

In accordance with this salutary recommendation of the Executive, induced by a vigilant attention to the public interests, a bill was introduced into the House of Representatives to create, permanently, the office of State Printer; and the same was passed and sent to the Senate. In the latter body, after the adoption of some amendments, it was passed without a dissenting voice. Previous to its passage, and when the bill was under discussion, it was stated, and seemed to be conceded, that the prices of printing, as fixed by the bill, were as low as they could be fixed, consistently with the labor to be performed, and the amount of capital necessary to be employed in the work.

The advantages to the public interests and to the increased facilities in the prompt transaction of the legislative business, from the salutary provisions of the bill, were urged and appeared to be admitted. The benefit to be derived, in expediting the performance of our duties, by the printing of the annual reports of the departments, prior to the meeting of the Legislature, is too obvious to require any remark; and the injury to the public interests by the withholding of the public documents from legislative action, is equally obvious. If the law had been executed, the reports of the Canal Commissioners, Auditor General and State Treasurer, would have been printed and on our tables at the commencement of the session; and we could then have had, in an official form, the important information in relation to the financial condition of the Commonwealth, which is so absolutely necessary to the proper performance of our duties.

The act referred to was finally passed by the House of Representatives, and presented to the Governor on the 24th of March last, and so desirous was the Governor to express his concurrence with the representatives of the people, that he approved of and returned the bill to the House in which it originated, on the same day that it was presented to him. It therefore became a law of the Commonwealth, with the Executive approbation, and invested the Senate and House of Representatives with the power of electing State Printers. The first section of the act provides, "that in order to secure skill, despatch and responsibility in the execution of the printing of the Commonwealth, and to lessen the expenses of printing, there shall be hereafter elected, in the manner now provided by law for the election of State Treasurer, two State Printers, one to do the English and one to do the German printing of the Commonwealth," &c., and directs "that the annual reports, authorized by law to be made by the Canal Commissioners, the State Treasurer, Auditor General, &c., shall be delivered to the Governor, &c., who shall cause the same to be delivered to the State Printers, to be printed, &c., and laid before the Legislature, annually, at the opening of the session."

The thirteenth section provides "that the first election of State Printer shall take place on the third day after the passage of this act, unless that day be Sunday, in which case it shall take place on the Monday following; and they shall be elected on the first Monday in March, in every third year thereafter, and their term of office shall commence on the first day of July next succeeding their election."

The fourteenth section provides "that each and every State Printer appointed under the act, shall hold his office for the term of three years, and until a successor be duly elected, &c., unless sooner removed by a resolution of the Legislature, for neglect of duty or misconduct in office, such misconduct or neglect to be set out in the resolution of removal as fully as practicable," &c.

In pursuance to the provisions of the act referred to, the two Houses met in convention in the Hall of the House of Representatives, on the 27th of March, being the day fixed by the act. After two ballots, without electing, the convention adjourned to the 31st of March. Upon the day of adjournment, the convention again assembled, and after one ballot, adjourned to the 10th April. A bill, entitled "A supplement to the act providing for the election of State Printers," which gave the printing to the lowest bidder, was finally passed on the 4th of April last, by a large majority, and sent to the Executive. The convention met, in pursuance to adjournment, and again adjourned to await the action of the Governor, upon the bill before him. The bill giving the printing to the lowest bidder, was returned by the Executive, with his veto; and he



urged upon the Legislature, in the following cogent terms, the propriety of proceeding to the completion of their duties, under the act to elect State Printers :

“In order, however, to establish a still more perfect and permanent system, I recommended to the Legislature, in my last annual message, the passage of a law for the election of a State Printer, for a period of years, allowing him fixed and reasonable prices for the work. I did so from a conviction that such a law would effectually prevent the annoying struggles for the printing, witnessed at the opening of each succeeding Legislature, and would ensure the execution of the public printing with greater facility, and at more economical rates ; in which opinion I was confirmed by the salutary example of other States. In accordance with this suggestion, such a law was passed at the present session, and approved by me on the 24th ultimo. Before its provisions are, however, carried into effect, and the soundness of the experiment has been tested, the present bill is presented to me, which, if enacted into a law, will defeat the consummation of the former law, and re-introduce the exploded system of allotment to the lowest bidder, which has been once tried, and by common consent, abandoned. To this retrograde policy it is impossible for me to yield my assent ; and I still think that the provisions of the act of the 24th ult., establishing permanently the office of State Printer, are sound and wholesome, and should be carried out.”

The veto was sustained—less than two-thirds voting for the bill. In pursuance to the adjournment, and in accordance with the express directions of the Executive, the convention again met and proceeded to perform their duties ; and elected the present State Printers on the fourth ballot. After the result of this election, held in accordance with the Executive wish, was ascertained, it was then discovered, upon application of the Governor to the Attorney General, that he could arrest the action of the legislative branch of the government, by withholding his approbation to the sureties of the bond. This extraordinary pretension of having the power to pass judgment upon the regular proceedings of both Houses in convention, performing their duties under a law which he had approved, and acting, too, in accordance with his own express suggestion, as contained in his veto message, is without a precedent to warrant such an assumption of power. The Executive, on a former occasion, made the extraordinary proposition, in defining the landmarks of Legislative and Executive power, that “legislative usurpation” was “the most frequent, oppressive and tyrannical of all others.” The Executive department is, according to this doctrine, the unsuspected source of purity and virtue ; and in the exercise of power, no danger is to be apprehended from any attempt to encroach upon the other departments of the government. The expectations of all who confidently rely upon the permanency of the republic, must be directed to the action of the legislative branch of the government. Invested with the highest power of sovereignty, and clothed with the official character of representatives of the will and interests of the people, it is essential to the promotion of all the great objects of the constitution, that public confidence in this branch of the government should not be weakened or impaired. It has been truly said by one of our most distinguished statesmen, “that the control of the people over the organs of their government, is the measure of its republicanism ;” and the expression, therefore, of the popular will, as exhibited by the sentiments and action of the two branches of the Legislature, must properly be considered under the principles of our government, as constituting the best safeguard of our rights and liberties. If any efforts to shake the confidence of the people in the fidelity of the legislative branch could be successful, the main pillar to sustain the fabric of free government, would thus be shaken ; and the public faith would be greatly impaired as to its ultimate preservation. “The encroachments of each of the three departments of the government, upon the lines of demarcation which limit their constitutional barriers, should be most carefully and jealously watched ; and the necessary tendency of power to concentrate itself around the will of one man, requires an untiring vigilance to check its progress. Entertaining these general views of the principles of our institutions, the committee will proceed to consider the reasons furnished by the Attorney General, which induced him to declare the election of the two Houses invalid ; and which also suggested to him the propriety of the opinion which he expressed, that the Governor ought not to approve of the bonds which had been tendered.



The Attorney General, in the opinion which he delivered on the application of the Executive, has determined that the election of Mr. M'Kinley was invalid, and the Governor ought not to approve of the bond. After adverting to the provisions of the act to create permanently the office of State Printer, and referring particularly to the time and manner as prescribed in the act for the election, he remarks as follows, viz :

“Here we have the time clearly and unequivocally prescribed. No one can mistake it. The first election is to take place on the third day after the passage of the law, unless that day be Sunday, and in such case, the election is to take place the Monday following. No authority is given to the two Houses to adjourn from day to day. The law passed by the two Houses, and sanctioned by the Executive, has designated the day. The two Houses only, either in or out of convention, cannot change the law by their bare resolution. If they could, the Executive is annihilated, and the Constitution rendered the mere sport and mockery for the majority in them. Against such legislative encroachments, there would be neither safety or protection. But the absurdity of such a pretence, is too plain to require argument for its exposure. The whole question here is, whether the provision in the first section, that the State Printers shall be elected “*in the manner*” the State Treasurer is elected, qualifies the day designated in the thirteenth section, so as to authorize the two Houses in convention to adjourn from day to day, and elect on the 15th of April, instead of the 27th of March, the third day after the passage of the law. I think it does not, for the first section has sole reference to the mode of organizing the convention, and conducting its operations, and not to the day on which it is to meet, and to which its power is limited and confined.

“Nothing is clearer, than that when the law designates a day on which an act is to be done, without authority to perform it on another day, it is void if done on any other day than that prescribed. Such I conceive to be the case in this instance.

“The fact amounts to nothing, that the State Treasurer, if not elected on the day designated, may be elected on such other day as the convention adjourns to. The law specially provides for this contingency ; but in the election of State Printer it does not. It looks to no other day than the one named, and doubtless it is a wise and salutary provision.”

These sentences embody the substance of the reasons given by the Attorney General for the conclusions to which he arrived ; and it will, therefore, be necessary for the committee briefly to examine their accuracy. The Executive considers the opinion as unanswerable ; and so conclusive was it upon his mind, that Hutter and Bigler, the German Printers, fell equally under its operation, although the Attorney General did not allude to these gentlemen in his opinion.

The first section of the act under consideration, prescribes that there shall be hereafter elected, in the manner now provided by law for the election of State Treasurer, two State Printers, &c. The time is not fixed, says the Attorney General, by this section, but is designated by the thirteenth section, which directs that the first election of State Printers shall take place on the third day after the passage of the act, &c. The authority given to the convention, to elect the State Printers in the manner provided by law for the election of State Treasurer, confers no authority upon the body to adjourn, according to this opinion, but the act must be performed upon the very day fixed ; and in accordance with the same opinion, the express provision contained in the law for the election of State Treasurer, authorizing an adjournment, has no application to the election of State Printers. The provisions of the law for the election of State Treasurer, expressly direct, that “if the election shall not be completed at the first meeting, the President shall adjourn the meeting to such time as a majority of the members then present shall determine ; and so, from time to time, until some one of the candidates shall receive the majority of the votes aforesaid.” That the Executive, in the exercise of his responsible duties, under the obligations imposed upon him by the Constitution and the laws, is presumed to have *been* aware of the power existing in the convention, is evident from the language of his message already referred to, in his veto of the bill giving the printing to the lowest bidder. The third day after the passage of the act for election of State Printers, was March 27, 1843. The veto



message was sent to the Senate on the 13th April, after the convention had held four meetings. This was, therefore, *seventeen days* after the expiration of the third day, at which time, he now alleges, the power of the convention was expressly limited. That convention was then directed by the veto message thus sent, to execute the law for the election of State Printer, which he had previously recommended—and he urged that such a law “would effectually prevent the annoying struggles for the printing witnessed at the opening of each Legislature; and that it would ensure the execution of the public printing with greater facility and more economical rates.” To the policy of the Legislature in giving the printing to the lowest bidder, which he denominated “retrograde,” he said, “it is impossible for me to yield my assent; and I still think that the provisions of the act establishing permanently the office of State Printer, are sound and wholesome, and should be carried out.” The convention, according to the express direction of the Executive, proceeded to the performance of their duties, and elected the State Printers. Certificates of election were made out according to the directions of the Act—signed by the President of the convention, and attested by the Teller of the House, and the Teller of the Senate. The State Printers elect then tendered their bonds to the Executive, with sufficient sureties in the penalty, and with the condition which the act directs. The Governor did not decline to approve of the sureties of the bond on any allegation of insufficiency; but held that the election was invalid, for the reasons contained in the opinion of the Attorney General; and as he concurred with him in opinion, he declined to approve of the sureties and the bond tendered.

It will, therefore, become necessary to advert briefly to the construction of the act for the election of State Printers, in the reasons thus given by the Attorney General for invalidating the action of the two Houses in convention.

That spirit of construction which nullifies the action of the legislative branch of the government; which substitutes a narrow criticism upon words, instead of ascertaining in a liberal spirit, the true intent of the framers of the law, cannot be too strongly deprecated. Its effects have been sensibly felt in defeating the most salutary measures of legislation; and the pernicious influence of such a power, improperly exercised, would subject us to the reproach of a distinguished writer, that laws under such direction “are mere cob-webs, calculated only to catch the weak, but that the strong will break through them with impunity.”

The sentiment has been justly expressed, that it is very difficult to frame any law which will secure it from the doubts and criticisms which may be exerted to control its meaning. The leading rule of exposition, in both statutes and contracts, is to ascertain and carry into full effect the true intent of their framers. “The intention of the law-giver is to be deduced from a view of the whole and of every part of the statute, taken and compared together; and this real intention, when accurately ascertained, will always prevail over the literal sense of the terms.” The words of a statute are to be construed according to their natural and ordinary signification and import; and acts, in relation to the same subject, are to be taken together as having one object in view. So it is to be inferred, “that a code of statutes relating to one subject, is governed by one spirit and policy, and is intended to be consistent and harmonious in its several parts and provisions; and upon this principle, whenever a power is given by a statute, every thing necessary to make it effectual, or requisite to attain the end, is implied.” These familiar and salutary rules of construction have been entirely overlooked and disregarded in the opinion to which we have referred. To adopt the strict and literal interpretation given to the provisions of a penal statute, would hardly justify the construction given to the law under consideration. The election of State Printers, according to the act, is to be conducted in the manner provided by law for the election of State Treasurer. The word “manner,” thus used, is peculiarly appropriate and expressive; and giving the word, according to the just rules of construction, its ordinary acceptation, there can be no doubt as to its meaning. Its signification in the sense here used, according to the best lexicographers, is “the method, the way of performing and executing” the act authorized to be done. And it necessarily implies the power of using all the means prescribed by the act to accomplish the object. Amongst the



means authorized to be employed to effect an election, is the power of adjournment expressly vested in the convention. The law for the election of State Printer incorporates the provisions of the act for the election of State Treasurer, so far as regards the manner of election; and thus connects and associates these provisions, as if they were all blended and united in one act.

The express power of adjournment, thus so explicitly given to the convention, might render it unnecessary to consider the inquiry as to the authority of the body to adjourn, if no such power had been expressly conferred. The committee can have no doubt as to the existence of this inherent power in the convention, even if it had not been expressly granted. The purpose of the law might readily have been annulled, if the construction were correct that the failure to complete the act upon the day designated, necessarily defeated the entire enactment. No election could take place after the failure to elect on the third day, according to the construction contended for, until the first Monday in March, in the third year thereafter; and in the mean time, this failure to elect must either have been construed a vacancy to be filled by the Executive, or the law, for the intervening period, must be considered as entirely inoperative. A construction which thus leads to such gross injustice and absurdity, and so manifestly defeats all the purposes of the law, cannot be sound, or in accordance with the intention of its framers. The right of adjournment is an incidental power vested in every, even the lowest, judicial tribunal; for where any process is returnable, or judicial act is to be done upon a particular day, and it becomes necessary for the completion of the duty, that there should be a continuance or adjournment, it is a necessary incident to the exercise of the jurisdiction thus vested.

The general rule as to corporations is, that they are the mere creatures of their charters, and cannot exceed the powers thus vested; and where an election of corporate officers is directed to be held by law on a particular day, the direction must be complied with, and the election must be held accordingly, otherwise the corporators would be without notice. But a neglect to choose officers at the proper time, has been held not to work a dissolution of the corporation, but will merely suspend the exercise of the powers of the corporation until proper officers are chosen. And where the members of a corporation are directed to be annually elected, the words are only directory, and do not take away the power incident to the corporation to elect afterwards, when the annual day had by some means, free from design or fraud, been passed by. And it was held in one case, that an election, eight days after the charter day, was good, for that the day was only directory. And under particular circumstances, where the wishes of the corporators have been fully expressed, and the election conducted in good faith, it will not be set aside on account of any informality in conducting the same.

It was, perhaps, unnecessary to cite these cases in illustration of the power of the convention to adjourn, as necessary and incidental to the exercise of the power to elect; because, the general authority vested in the two Houses far transcends the limited and special authority vested in a private corporation. The convention had, therefore, the right to adjourn, by the express provisions of the act under which the election was held; and without those provisions, the power would have existed as incidental and necessary to a proper execution of the authority with which they were invested.

The committee will now proceed to the inquiry as to the extent of the power vested in the Governor, by the law for the election of State Printer. The only authority which he had was conferred by the provisions of the act, and its language is clear and explicit. "The State Printers are required respectively to execute to the Commonwealth, a bond in the sum of ten thousand dollars, with two or more sufficient sureties, to be approved by the Governor, conditioned for the faithful performance of the duties of their offices respectively, which bonds shall be deposited in the office of the Secretary of the Commonwealth." The power conferred was merely to submit to his judgment the sufficiency of the sureties. He had no right to revise the proceedings of the two Houses, and determine upon the validity of the election. The designation of his official character in the act, authorizing the performance of a special and limited duty, gave him no authority beyond the terms of the enactment. His official power gave weight and influence to his determination which rendered this exercise of authority the more dan-



gerous. If the Executive, upon a special authority conferred, can thus revise and examine into the formality and regularity of an election, and pass judgment against its validity, he possesses a power which will overshadow the popular will and undermine the sanction of legislative enactments. Without adverting to the great variety of cases in which power is conferred upon judicial officers, and upon the Executive, in relation to the approval of official bonds, expressed in terms similar to the provisions already cited, it will be sufficient to specify the offices of Sheriff, State Treasurer, Brigade Inspector, and County Treasurer. In the case of a Sheriff, his bond and sureties must be approved by two Judges of the Court of Common Pleas of the proper county, and no commission can issue until the Governor shall also have approved of the sufficiency of such sureties. The bond directed to be given by the State Treasurer is also to be approved by the Governor, and the bonds of Brigade Inspectors and County Treasurers to be approved of by two of the Judges of the Court of Common Pleas of their respective counties. Each of these officers, instead of executing the special authority of merely passing upon the sufficiency of the sureties, might, according to the doctrine assumed, revise and examine the validity of the election; and if their judgments should infer any irregularity, the bond must be rejected and the will of the people violated. Under the act providing for the election of Prothonotaries, Clerks, Recorders and Registers, it is made the duty of the Sheriff to transmit one of the returns of the election to the Secretary of the Commonwealth, to be filed in his office, and it is made the duty of the Governor to issue his commission to the officers thus elected. Upon the principle of construction contended for, the Governor could withhold the commissions of these officers upon any allegation of illegality or irregularity in the election, and thus exercise a controlling power unknown to the constitution and the laws, and which would be foreign to the spirit and policy of our institutions. The great advantage resulting from republican governments, with written constitutions and fixed laws, is, that the duties and powers of officers are distinctly prescribed, and the rights and interests of the people secured from encroachment. A great writer justly remarks, "that there can be no liberty if the power of judging, or the judicial power, be not separated from the legislative and executive powers." And, perhaps, there cannot be a more dangerous precedent in free governments, than that assumption of discretionary authority, bounded by no limits, protected by no barriers, but the will of the individual who thus exercises the power. It was justly said by a distinguished English jurist, "that authority resulting from discretion is always unknown—it is different in different men—it is casual, and depends upon constitution, temper, and passion. In the best, it is oftentimes caprice—in the worst, it is every vice, folly and passion, to which human nature is liable."

The special power, therefore, under our several acts of Assembly, given to the Governor and other officers, as to the approval of the official bonds and sureties tendered by officers, does not confer any authority to contest the validity of the election of the officer whose bond is thus tendered. The only remedy of any party aggrieved, where there is a regular certificate of election in the form prescribed by law, is by an application for redress to the proper judicial tribunal. Any other course or construction would tend to weaken the popular will, and subvert the security of our free institutions.

The committee do not deem it necessary in the performance of the duty assigned by the Senate, to enter into a detailed examination of all the facts as disclosed by the testimony. Each member of the Senate will, no doubt, examine the whole of the testimony in the formation of his judgment. They will, therefore, briefly advert to such facts only as disclose the pecuniary arrangements, and attempted pecuniary arrangements made by candidates for the office of State Printer, with third persons, to procure certain influences to promote the probability of their election.

The first witness called and examined by the committee, was J. M. G. Lescure; and in answer to the third interrogatory hereinbefore stated, he said:—"I have no knowledge of the matters contained in this specification, except from hearsay, if I am required to say it." In reply to the fourth interrogatory, he details the expressions of the opinions of the Executive, and the supposed influences which were attempted to



be exerted. He further stated the names of the members of the firm who own and conduct the "Democratic Union," and adverts to the terms of the agreement regulating the co-partnership. He further states in answer to the question, whether he had at any time heard Theophilus Fenn or Colin M'Curdy say, that they, or either of them, were to receive a certain amount of the profits arising from the office of State Printer, in the event of Isaac G. M'Kinley and Hutter & Bigler's election, or either of them? He said—"No, except what I have seen in their papers;" and in answer to another question, he stated, "that he had no conversation with them on that subject."

The next witness called and examined, was Edwin W. Hutter. The third specification being read by the Chairman, the witness answered, that "so far as this interrogatory relates to Isaac G. M'Kinley, he had no personal knowledge whatever;" and so far as the interrogatory relates to Hutter & Bigler, he expressly denies having made any arrangement with members of the Legislature, or other persons, by which any improper influences were exerted to secure their election: and that they were elected by the united vote of the party to which they belonged, and received but a single vote of any member of the Legislature politically opposed to them." In answer to the question, "Has any other person an interest with you and Mr. Bigler in the German printing and binding?" He said—"Shortly before the election of State Printers, a co-partnership was formed between the firm of Baab & Hummel, and the firm of Hutter & Bigler. These two firms were each printing a newspaper at the seat of government of the same political character. For a long time prior to this election, the propriety of merging these two establishments into one, was the subject of frequent conversations between us. Believing that the election of State Printers presented a favorable moment for carrying this purpose into effect, the two establishments were accordingly consolidated.—Messrs. Baab & Hummel have accordingly an equal interest with Hutter & Bigler, not only in the State printing, but in every thing else pertaining to their establishment. If the committee desires it, I will present to it our articles of co-partnership." And in answer to the question, whether he knew "any thing of the consolidation of the other three presses, the Keystone, Gazette and Reporter?" He said—"I know that they were consolidated, but beyond a mere general knowledge of the fact, I know nothing that I can call to recollection." The witness then proceeds to detail the conversations with the Executive, expressive of his (the Governor's) anxiety to defeat the nominee of the Democratic caucus, and the alleged influences believed to be exerted to procure the election of John H. Dimock. The witness details his conversations with the Governor, which preceded the veto to the bill giving the printing to the lowest bidder; and states that he has reason to believe, that Governor Porter was subsequently induced to believe that his favorite, John H. Dimock, could be elected: And that upon those considerations, and those only, he consented to veto the bill allotting the printing to the lowest bidder. The witness also states the conversations he had with the Executive in relation to the opinion of the Attorney General, and in answer to a question which he states that he put, as to what the Legislature would do for printers? The Governor replied:—"That there would be no difficulty upon that point—that the Attorney General was very clear that the Governor, under the law, by implication, had the authority to appoint State Printers: And, that although he himself was not perfectly clear upon that subject, he had yet no doubt that it could be done."

Thomas J. Rehner was next examined. He stated that on the 15th of April last, Captain M'Kinnon, a member of the last House of Representatives, called at the Surveyor General's office. That Daniel Small, a clerk in the office, on the Monday or Tuesday following the election of State Printer, handed to witness a paper, dated Harrisburg, April 15, which paper was, as near as the witness could recollect, an agreement of I. G. M'Kinley. "That if the members of the counties of York and Adams, would vote for him for State Printer, this day, and I am elected, Adam J. Glosbrenner is to have the one-fifth of the State Printing, or one-fifth of the profits thereof"—witness was not certain which—and stated, that is the whole I can recollect of it. Witness then stated, that he had no knowledge of any instrument of writing executed by Hutter and Bigler, to effect any influences to promote their election. Witness also states, that he has no knowledge that any member of the Legislature knew of the paper described



unless the member from York already referred to. In answer to a question put to the witness, whether he knew of any sum of money having been paid, or promised to be paid, by I. G. M'Kinley to Captain M'Kinnon, or any other member of the last Legislature to induce him or any other member to vote for him as State Printer? He replied, that he did not know of any money or other property offered or given to any member, for any such purpose. It is proper here to remark, that this is the uniform testimony of all the witnesses examined upon this subject—that the influences exerted upon members of the Legislature, were the result of persuasion and argument, merely.

Witness then stated that he held a situation in the Surveyor General's office—that at no time did Governor Porter hold out any inducements to him, to influence members in relation to the election of State Printer—and that at no time had he any conversation with the Governor on the subject.

Colin M'Curdy was then examined as a witness, and stated in answer to the third interrogatory, that he had no personal knowledge of any sum of money or other property paid, or promised to be paid, by I. G. M'Kinley or Hutter and Bigler, or either of them, or by any person for them, or either of them, to any member of the Legislature, or any other person, to procure the votes of any member or members of the Legislature for the said M'Kinley or Hutter and Bigler, for the office of State Printer. He then stated in answer to the fourth interrogatory—

“After the passage of the bill for the election of State Printers, John H. Dimock and myself entered into an agreement, stipulating that he, in the event of his election as State Printer, by the aid of the votes of my political friends, would pay to me fifteen hundred dollars for the benefit of my press, the Pa. Intelligencer. That is all I know of the matters contained in this specification. The agreement was in writing, and there were duplicate copies of the same. That agreement has since been destroyed. Mr. Dimock called upon me immediately after the election of State Printers, and I handed the agreement to him, and it was destroyed in my presence. I mean the copy left in my possession was destroyed. I have no knowledge of what Mr. Dimock done with his copy.”

In reply to an inquiry upon the subject of any arrangement between M'Kinley and the witness, he said, that “he had expressed himself fully satisfied with the arrangements made by Mr. Sedgwick, as communicated to me by him.” In answer to the question, what sum of money he expected to receive in the event of the ratification of the election of I. G. M'Kinley? He said, three thousand dollars. And in answer to another question as to the consideration, said—“I understood it was in consideration of the aid of votes of my political friends. In connection with that answer, it may be proper for me to say, that I never, in any manner, attempted to influence unduly, any member or members of the Legislature to vote for Mr. M'Kinley as State Printer; nor do I know of any other person having done so.” The witness then states, that his arrangement with Mr. Dimock, was prior in date—that he was informed by Mr. Dimock, that he might converse freely with Mr. Brawley of the House of Representatives, upon the subject, and that he did so. He also states that Mr. Best of the Argus, made an application to him to use his influence to procure the votes of Whig members of the Legislature, to vote for him as State Printer; and stated, as an inducement to accept his proposition, that Gov. Porter was favorable to his election, and would use his influence to effect it. The witness states that on the next morning, he declined entering into any negotiations with him on the subject. This was subsequent to the arrangement with Mr. Dimock, and before the arrangement between Mr. M'Kinley and Mr. Sedgwick. The latter arrangement, witness says he had no knowledge of until the day on which Mr. M'Kinley was elected.

Gen. Simon Cameron was then called and examined. He stated that he had no knowledge of the matters referred to in the third and fourth interrogatories. In answer to the question as to his knowledge of any arrangements made by any person tending to secure the election of I. G. M'Kinley—he said:

“I was not at Harrisburg during the pendency of the election of I. G. M'Kinley. While Mr. Bratton was the candidate of the democratic party, which lasted several days, I was at Harrisburg the greater part of the time, and felt some interest in the



election. During last summer some time, I got in my possession some papers, which probably have some connexion with the election of State Printer. I met Mr. Sedgwick, who asked me to take charge of them, and after hesitating some time, I consented to do so. They were sealed up and put in the vault of the Bank of Middletown. In the autumn, I received another package from Mr. M'Kinley, which I also sealed up along with the others, and put them in the same place. One of them I sealed in the presence of Mr. M'Kinley and Mr. Sedgwick, the other I sealed up myself. The first package, I believe, contained six notes of five hundred dollars each; and the second, five of the same amount, each. I think the first were payable to Mr. Sedgwick, and the second to Theophilus Fenn. I have them endorsed as the property of Mr. Sedgwick and Mr. Fenn. I do not remember what was said at the time. I understood they were to be paid to the whig and antimasonic printers, for their influence in the event of the confirmation of the election of Mr. M'Kinley. I do not remember the dates. The first package I opened—the second, I did not. They are yet in the vaults of the Bank of Middletown. I was served with a subpoena, but I do not recollect whether it was a subpoena *duces tecum* or not. After Mr. M'Kinley's election was ratified, my understanding was, they were to be given up to Mr. Sedgwick and Mr. Fenn. I do not remember that the parties told me what was the consideration of the notes, but I felt very well satisfied in my own mind, what the consideration was. I think one of the packages was handed to me in July, the other in September. I know of no arrangements having been entered into in regard to the German printing."

The packages of notes referred to in this testimony, were afterwards produced by Gen. Cameron, and a statement taken of them and inserted upon the journal of the proceedings of the committee.

The committee has thought it imperative in the performance of the duty assigned them by the Senate, to report so much of the testimony as distinctly discloses the pecuniary arrangements which were particularly made the subjects of investigation. It would extend this report beyond its proper limits to detail the testimony of the remaining witnesses. The testimony of both Mr. Sedgwick and Mr. Fenn, very fully details the negotiations and arrangements already disclosed, and the motives which induced these arrangements. Mr. Clyde testified as to the circumstances that transpired, connected with the negotiations and arrangements attempted and made in reference to the binding, &c. The testimony of the witnesses just alluded to, and that of the remaining witnesses, is important; but does not add materially to the information of the Senate, as to the leading facts connected with the arrangements already disclosed. All the remaining witnesses disclaim any knowledge of any improper influence attempted or exerted by the Executive upon them, or any other persons in reference to the election of State Printer.

It is an act of justice due to Messrs. Hutter and Bigler, to state that there is no testimony to implicate them with any of the pecuniary arrangements before stated, as connected with the election of State Printer.

In consideration of the legal effect of the facts thus disclosed, it becomes necessary for the committee to inquire:

First. Whether the provisions of the act for the election of State Printers, and carrying the same into effect by an election, constitute such a contract with the State Printers, as ought to be binding on the Legislature?

Second. Do the arrangements disclosed, amount to such fraud, as must necessarily invalidate the election; and if not, has the Legislature a legitimate right, either to limit the terms and time of the alleged contract, or to annul it altogether, by a repeal of the act, if they should deem this course essential to the public interests?

These questions necessarily present an extensive field of inquiry; and the committee, with an anxious desire to abbreviate this report, will be restrained in their consideration, to a succinct statement of the leading principles which must direct their judgment.

In the consideration of the first question, the committee will remark, that the two branches of the State Legislature, represent, and are invested with the power of the people, except so far as they are restrained by constitutional injunctions. The sover-



eign authority of the State, as well as the individual members of society, can enter into contracts, and such obligations may be binding on subsequent Legislatures.

The amount of the present public debt, although too lavishly borrowed and expended, is a contract of this character, obligatory upon the State, and binding all its property and resources for re-payment.

The obvious reason that the contract just stated, is held to be of imperative obligation, is, that the State has received the moneys of those who hold her bonds, and has expended them in lines of communication, which have greatly added to her wealth and resources. Under the law for the election of State Printers, there are mutual obligations upon the part of those officers, and the Commonwealth. They are bound to furnish the materials, and execute the work as prescribed by the act, and the Commonwealth agrees to pay certain fixed prices, as the security for their out-lay. "A State," it is properly said, "is as much inhibited from impairing its own contracts, or a contract to which it is a party, as it is from impairing the obligation of contracts between two individuals." The State Printers can be sued upon their bond, and held to liability, for any injury resulting to the Commonwealth from a failure to perform their duties; and every principle of good faith, should, therefore, require a correspondent performance of the obligation on the part of the Commonwealth. The committee will, hereafter, consider the power of the Legislature to restrict the existence of this contract, or to repeal the act upon making proper compensation to those interested.

Upon the second branch of inquiry, as to fraud in the election of State Printers, your committee is of opinion, that the pecuniary arrangements, proved to have been made by the State Printers, with third persons unconnected with members of the Legislature—although entirely condemned by the committee—do not necessarily invalidate the election. So long as the law and the elections remain in full force, which have taken place under it, the only remedy is by appeal to the legislative power. It has been already remarked, that the obligation connected with the election of State Printer, necessarily involving those who have undertaken the work upon the part of the State, in a large expenditure of money, should be treated upon the same principles which regulate the obligation of contracts. The committee is of opinion, under the circumstances disclosed, that the Legislature has the undoubted power of repealing the act for the election of State Printers. They should, however, be paid for the work they have already done, with a reasonable compensation for any actual loss sustained in obtaining and procuring the proper materials for the work.

In thus adverting to the nature of the obligation upon the part of the Commonwealth connected with the office of State Printer, the committee has not deemed it necessary to extend this report, by a review of the cases fixing the construction of that important provision in the Constitution of the United States, which prohibits a State from passing any law impairing the obligation of contracts. Under this provision, it has been held, that when a legislative grant was in the nature of a contract, and under which a vested title was conferred, that the estate thus vested, cannot be annihilated by the Legislature, no matter as to the cause that may be assigned for its invalidity. The power of the Legislature to act in any matter in which the public interests are concerned, should not, however, be restricted, unless the constitutional prohibition is clear and unequivocal. It is essential to the proper security of the interests of the people, and to promote the great objects of our republican institutions, that the legislative department of the Government may be permitted to act upon any emergency that may arise, untrammelled by the policy or acts of preceding legislation.

The result of the cases in reference to the effect of the constitutional injunction we have referred to, is "that it has never been understood to embrace other contracts than those which respect property or some object of value; and confer rights which may be asserted in a court of justice." Officers, created by the Legislature, connected with the administration of civil government, or with the exercise of political power, seem to be placed, as a general rule, under the supervision and control of legislation. The State Printers are officers associated with the administration of the Government, and necessarily exert some political power. And notwithstanding the force of the position just stated, yet it is to be considered, that the obligation of duty and service, upon the



part of the State Printers—being the performance of work, procuring materials and the expenditure of money, in consideration of certain prices to be paid by the Commonwealth—partakes of the character of a contract, and should not be annulled, unless some compensation be granted, upon the principles before stated.

The committee deeply regret the existence of the pecuniary arrangements disclosed by the testimony, and have no hesitancy in declaring, that if these arrangements had been known to the Legislature, at the time of the election, it is fairly to be presumed, that they would have defeated the election of any candidate who was concerned in any such arrangements.

The prices of printing are fixed by the act, and unless by some improper charges, no sum beyond those prices can be drawn from the Treasury. The injurious effect, however, of the pecuniary arrangements to which we have referred, is obvious in the effort that might be made to procure an indemnity from the public Treasury for the large sums of money thus to be paid to third persons.

It has been truly said, that the public good is an inactive lethargic principle, whose still small voice is seldom heard amid the clamor and conflict of private interests; and it should therefore be a regulating principle of our institutions, that a candidate for official station, should rest his claims alone for success, upon his own individual merits; and that all extraneous influences exerted without regard to the just purposes we have mentioned, should be entirely discarded.

That the existence of political parties is inseparable from the spirit of liberty and republican government, is a truism too obvious to require illustration, either by reference to the history of other nations, or the experience of our own country. It has been somewhere remarked, “that party spirit is the foam and spray that dash around the Ship of State, sometimes threatening to engulf her, yet composed of the very elements that support and buoy her up.” The figurative expressions here used, do not sufficiently illustrate the beneficial influences resulting to the Government from a proper and moderate exercise of that freedom of opinion which is the foundation of political parties; and necessarily produces that salutary spirit of vigilance which is so constantly directed to detect the errors and abuses of those who are clothed with official power. It is almost unnecessary here to remark, that the press in our country, from the nature of our institutions, justly exercises an immense power in controlling and influencing public opinion; and it is therefore important to the public interests, that the press of each political party, should be unconnected by any association which might impair its independence or weaken its influence with the community. There could not be a higher or juster estimate of the power of the press, than that contained in the sentiment of a distinguished English writer, “that if it were possible for the liberty of the press to exist in a despotic government, and (what is not less difficult) for it to exist without changing the Constitution, this liberty of the press would alone form a counterpoise to the power of the Prince.” How important is it, then, that it should be preserved and maintained, with its moral influence unimpaired and unsuspected, spreading its intelligence throughout the land, promotive of the great objects of free government, to secure the peace, happiness and liberties of the people.

The committee offer the following resolution:

*Resolved,* That the committee be discharged from the further consideration of the subject.

B. CHAMPNEYS,  
E. A. PENNIMAN,  
JNO. B. STERIGERE,  
DANIEL L. SHERWOOD.